



**Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Twons Auto Sales, LLC

Case No: DOT-21-0022

FINAL DETERMINATION

On September 8, 2021, Claimant Alexandro Powell (Claimant) filed a bond claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Twons Auto Sales, LLC (Dealer). Pursuant to Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims was published in the Daily Reporter, in Milwaukee, Wisconsin, on October 15, 2021. The notice informed other persons who may have claims against the Dealer to file them with the Department by December 14, 2021. An additional claim, Case No. DOT-21-0027, was filed against the Dealer's bond within the time for filing claims set forth in the published notice; however, the total value of both claims does not exceed the amount of the available bond(s). On January 18, 2022 a Preliminary Determination was issued under Wis. Admin. Code § Trans 140.26(4)(a). No objections to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d), the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Twons Auto Sales, LLC
7928 W. Clinton Avenue
Milwaukee, WI 53223

Western Surety Company
101 Reid Street, #300
Sioux Falls, SD 57103

Tanisha M. Rhodes
3222 N. 1st Street
Milwaukee, WI 53212

Alexandro Powel
3317 W. Saint Paul Avenue
Milwaukee, WI 53208

Nathan E. DeLadurantey, Esq.
3330 S. Executive Dr., Ste. 109
Brookfield, WI 53005

FINDINGS OF FACT

1. Twons Auto Sales, LLC (Dealer) is licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities are located at 7928 W. Clinton Avenue, Milwaukee, Wisconsin.

2. The Dealer has two continuous surety bonds in force in the amount of \$50,000 each satisfying the requirements of Wis. Stat. § 218.0114(5). The first continuous bond began on January 21, 2020 (Bond # 64944195) issued by Western Surety Company. The second continuous bond lists a beginning date of February 17, 2021 (Bond #65398472) and was also issued by Western Surety Company.

3. On October 22, 2020 the Dealer sold to the Claimant a 2006 Honda Accord, VIN 1HGCM56896A024197 (vehicle). The purchase price for the vehicle was listed as \$3,140. The Claimant has submitted documentation of a receipt reflecting a \$1,000 cash payment made by the Claimant on October 22, 2020 and reflecting a balance owed in the amount of \$1,211.

4. Following execution of the vehicle purchase contract and receipt of down payment on October 22, 2020, the Dealer failed to submit to the Department an application to title the vehicle in the Claimant's name.

5. In November 2020 the Dealer repossessed the vehicle from the Claimant.

6. On November 25, 2020 the Dealer sold the vehicle to another purchaser.

7. On December 14, 2020 the Claimant filed a Summons and Complaint against the Dealer in Milwaukee County Circuit Court, Case No. 2020CV007269, alleging that the Dealer violated Wis. Stat. § 425.206 by improperly repossessing the vehicle without proper notice.

8. On May 13, 2021 a default judgment was entered against the Dealer in Milwaukee County Circuit Court, Case No. 2020CV007269, awarding the Claimant a total of \$5,212, which included \$3,211 in damages plus attorneys' fees and costs of \$2,001.00.

9. On September 8, 2021 the Claimant submitted a bond claim with the Department alleging damages in the amount of \$3,211 based upon the Milwaukee County Circuit Court judgment entered on May 13, 2021.

10. The Claimant's claim arose on October 22, 2020, which is the date when the vehicle was purchased and when the Dealer failed to properly submit the application for title to the vehicle that is the subject of the claim against the surety bond of the Dealer. The bond claim was filed

within three years of the ending date of the one-year period the bond issued by Western Surety Company was in effect and is, therefore, a timely claim.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.0116(1)(a) to (gm), (im)2., (j), (jm), (k), (m) or (n) to (p), Stats.

...

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Under Wis. Stat. § 342.16(1)(a), Transfer to or From Dealer:

...Within 7 business days following the sale or transfer, the dealer shall process the application for certificate of title, and within the next business day after processing the application, the dealer shall mail or deliver the original application for certificate and all associated materials required by the department to the department.

In addition, a security interest in a vehicle is not valid unless perfected under Chapter 342. See Wis. Stat. § 342.19(1). Further, repossession of a vehicle must comply with the notice requirements set forth under Wis. Stat. §§ 425.205 and 425.206. Under Wis. Admin. Code § Trans 140.26(4)(b), the Department is required to "give full faith and credit to applicable findings of fact and judgments entered by a court in an action involving the claim in which the claimant and the licensee were

opposing parties.” However, under Wis. Admin. Code § Trans. 140.21(2) through (4), some claims may be disallowed, in part, including for failing to provide supporting documentation or evidence for a claim.

To allow a claim against the Dealer’s surety bond a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1), identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. The Dealer in this matter failed to properly submit the title application to the Department as necessary to process the title and registration for the vehicle sold to the Claimant contrary to Wis. Stat. § 342.16(1)(a). In addition, the Dealer repossessed the vehicle from the Claimant without having first perfected a security interest in the vehicle or providing due notice to the Claimant contrary to Wis. Stat. §§ 342.19(1) and 425.206(1)(d). A violation of these sections, in turn, constitute violations of Wis. Stat. § 218.0116(1)(gm). Wis. Stat. § 218.0116(1)(gm) is a section identified in Wis. Admin. Code § Trans 140.21(1)(c)1. Moreover, as a result of the above violations, the Claimant filed an action against the Dealer in Milwaukee County Circuit Court alleging violations under Chapters 425 and 427 of the Wisconsin Statutes, including specifically, a violation of Wis. Stat. § 425.206. The circuit court entered a default judgment against the Dealer on May 13, 2021.

The Claimant’s Bond Claim form submitted in this matter listed the total amount of the claim as \$3,211, which was the amount of damages awarded in the Milwaukee County Circuit Court default judgment. Although the Department is required to give full faith and credit to the allowable actual losses set forth in that judgment under Wis. Admin. Code § Trans 140.26(4)(b), the Claimant submitted insufficient documentation with his bond claim to support actual losses in the amount of \$3,211. The purchase contract price of the vehicle is listed as \$3,140 and additional documentation submitted demonstrates that the Claimant paid the dealer \$1,000 in cash on the day of purchase. The October 22, 2020 receipt for the cash payment reflects a balance owed in the amount of \$1,211. Thus, the documentation submitted supports an actual loss in the amount of \$1,929. Therefore, under Wis. Admin. Code § Trans 140.21(3)(d) and (4), the dealer bond claim in this matter is allowed, in part, in the amount of \$1,929, which represents the difference between the value of the vehicle and the amount that the Claimant paid towards the vehicle based upon the documentation submitted in support of the bond claim.

A subsequent claim filed against the bond, Case No. DOT-21-0027, alleges damages in the amount of \$6,655.00. The amount of both claims is less than the total bond of \$50,000 and therefore, both claims are allowable. Wis. Admin. Code § Trans 140.23(1)(b).

CONCLUSIONS OF LAW

1. The Claimant’s claim arose October 22, 2020, which is when the Dealer failed to submit the title application and registration fees associated with the vehicle sale. The continuous surety bond issued to the Dealer by Western Surety Company covers the period commencing on January 21, 2020. The claim arose during the period covered by the surety bond.

2. The Claimant filed a claim against the motor vehicle dealer bond of the Dealer on September 8, 2021, which is within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

3. The Claimant's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license pursuant to Wis. Stat. §§ 218.0116(1)(gm), 342.16(1)(a), 342.19(1) and 425.206(1)(d). The Claimant has supplied documentation to support a claim of actual losses in the amount of \$1,929. Pursuant to Wis. Admin. Code § Trans 140.21(3)(d) and (4), the claim is allowable, in part, in the amount of \$1,929; but not the full amount of \$3,211.00 identified in the Bond Claim form dated May 5, 2021.

4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by the Department against the motor vehicle dealer bond of Twons Auto Sales, LLC is APPROVED in the amount of \$1,929.00. Western Surety Company shall pay the Claimant this amount for his loss attributable to the actions of Twons Auto Sales, LLC.

Dated at Madison, Wisconsin on February 23, 2022.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____
Kristin P. Fredrick
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to ensure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be served and filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel
Wisconsin Department of Transportation
4822 Madison Yards Way, 9th Floor South
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to ensure strict compliance with all its requirements.